

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

In the matter of:    Z.K., by his parents	)	
Greg and Marla Kempf	)	
Petitioner,	)	
	)	
and	)	<b>CAUSE NO. 091120-66</b>
	)	
The Indiana High School Athletic Association (IHSAA),	)	
Respondent.	)	
	)	
Review Conducted Pursuant to	)	<b>Closed Hearing</b>
I.C. 20-26-14 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

Petitioner, Z.K., is a junior currently attending Rockville High School (Rockville) in the Rockville Community School Corporation. Z.K. recently transferred from South Vermillion High School (South Vermillion) in the South Vermillion Community School Corporation. The change of schools was not associated with a change of address.

As a sophomore, Z.K. participated in varsity baseball and varsity basketball. According to the record, Z.K. last participated in athletics on June 1, 2009. The Petitioner withdrew from South Vermillion in August 2009 and enrolled at Rockville. Petitioner completed the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report) in August 2009. Rockville completed its portion of the Transfer Report on August 18, 2009 indicating on its form that Z.K. should receive full eligibility under the Hardship Exception under IHSAA Rule 17-8.5. South Vermillion completed its portion of the Transfer Report on August 21, 2009 and recommended that Z.K. receive limited eligibility for a period of 365 days from the date the student last participated in sports at South Vermillion. On August 24, 2009, the IHSAA Commissioner granted Z.K. limited eligibility status for 365 days from the last day he participated in athletics at South Vermillion or until after June 1, 2010.

Petitioner appealed the decision of the IHSAA to grant him limited eligibility status and a review was scheduled for November 6, 2009. On November 18, 2009, the IHSAA Review Committee issued a decision upholding the Commissioner's decision.

## **APPEAL TO THE CASE REVIEW PANEL**

Petitioner, without counsel, appealed to the Indiana Case Review Panel<sup>1</sup> (CRP) on November 20, 2009. On or about November 23, 2009, the parties were notified of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. The hearing was set for December 16, 2009, in the offices of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On December 16, 2009, the CRP convened.<sup>2</sup> Petitioner was represented by his parents who were not represented by counsel. Respondent appeared by counsel. Prior to the hearing, Petitioner submitted two exhibits marked as “P-1” and “P-2” for identification purposes. Copies were made and provided to Respondent and members of the CRP. Respondent did not object to the admission of Petitioner’s P-1 and P-2. The CRP admitted Petitioner’s exhibits P-1 and P-2.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the Case Review Panel makes the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. Petitioner is a seventeen year old junior currently attending Rockville, a public high school in the Rockville Community School Corporation. He resides with his family in Hillsdale, Indiana.
2. Prior to enrolling at Rockville, the Petitioner attended school at South Vermillion in Clinton, Indiana.
3. The Petitioner transferred to Rockville in August 2009 because his parents believed the transfer was in the best interest of their son.
4. Petitioner’s parents were concerned about their son’s safety at South Vermillion due to continuing problems at the school over several months because of incidents such as a student bringing a knife to school and attempting to hurt a teacher during class, drug laced brownies at school, and a student with a stolen firearm on school grounds.

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<sup>1</sup> The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or his designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

<sup>2</sup> Five members were present: Ed Baker, Christi Bastnagel, Keith Pempek, Matthew Rager, and Brenda Sebastian. Dr. Thomas Huberty served as chairman over the proceedings.

5. Petitioner's parents were also concerned about their son's academic success at South Vermillion. The Student was interested in taking advanced classes not offered on campus at South Vermillion. In order to take the desired classes, the Student would have to leave campus for as much as two hours in one day due to travel and off campus class time for at least one of the advanced classes not offered on campus. The parents testified that the broader offering of advanced courses offered on campus at Rockville offered the Student more opportunity to develop academically.
6. The parents were also concerned about their son's attention deficit issues. The Student was on medication for attention deficit disorder and Rockville offered the Student smaller classes with individualized tutoring in math which the Student was identified as needing to bring his math skills up to an acceptable level in the Rockville curriculum.
7. In August, 2009, the Petitioner enrolled at Rockville and his parents completed the parent's section of the IHSAA Transfer Report.
8. In August, 2009, Petitioner requested full athletic eligibility and on August 24, 2009, the IHSAA Commissioner granted the Petitioner limited athletic eligibility.
9. Petitioner sought reversal of the limited eligibility ruling under rule 17-8.5, asserting that a hardship existed due to the safety issues continuing at South Vermillion, his attention deficit issues and concerns about his academic success due to the lack of advanced classes offered on campus at South Vermillion.
10. Based on evidence presented, the transfer from South Vermillion to Rockville was not athletically motivated.
11. On November 18, 2009, the IHSAA Review Committee upheld the Commissioner's determination. On or about November 20, 2009, the Petitioner appealed to the Case Review Panel.

### **CONCLUSIONS OF LAW**

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The CRP has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent and is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination.

2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. No evidence was presented to show that Z.K.'s transfer from South Vermillion to Rockville was athletically motivated.
4. Rule 19-6.2 permits limited eligibility for a student who transfers to a new district without a corresponding change of residence to the new district by the student's parents. The Petitioner is eligible for limited eligibility pursuant to this Rule.
5. Rule 17-8.1 provides that a hardship exists if the Petitioner can show that strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule; the spirit of the Rule has not been violated; and there exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.
6. Rule 17-8.5 provides that the Commissioner or his designee may set aside the effect of the transfer rule and grant a student full eligibility if the student continues to reside with his parents, the Student establishes to reasonable satisfaction that the transfer is in the best interest of the student and there are no athletic motives surrounding the transfer, and both principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and no athletic motive exists.
7. The CRP finds that Petitioner met his burden to show that the transfer was made in his best interest for many reasons, not the least of which was his safety and desire for greater academic achievement. The CRP also found that enforcement of the IHSAA decision without modification would violate the spirit of the rule and create an undue hardship. Therefore, the CRP finds that an evidentiary basis exists to modify the IHSAA's decision to provide both limited eligibility for basketball season and grant full eligibility to Z.K. starting at the beginning of baseball season of the 2009-2010 school year.
8. Based on the foregoing, the Petitioner's limited eligibility under Rule 19-6.2 is hereby **modified** as mentioned above.

### **ORDER**

The decision of the IHSAA to limit the Petitioner's eligibility at Rockville is hereby **modified** by the CRP by a vote of 5-1 as follows:

1. Z.K. shall have limited eligibility for the duration of basketball season during the 2009-2010 school year at Rockville.
2. Petitioner is granted full eligibility status commencing at the start of baseball season at Rockville during the 2009-2010 school year.

DATE: January 14, 2010

/s/ Dr. Thomas Huberty  
Dr. Thomas Huberty,  
Chair, Case Review Panel

### **APPEAL RIGHT**

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.